IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4676 OF 2003

Mugut Ganpat Pawar & Anr. ...Petitioners

Versus

Balwant Ganpat Pawar & Ors. ...Respondents

.....

Mr. N.P. Deshmukh, counsel for Petitioners

Mr. U.G. Deshpande, counsel for Respondents 1 to 4.

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CORAM: B. H. MARLAPALLE, J.

DATED: 28TH FEBRUARY, 2005

P. C.:-

1. Heard Mr. Deshmukh, the learned counsel for the petitioners who are aggrieved by the order dated 29.3.2003 passed by the learned IInd Joint C.J.J.D. at Wai below application Exh.46 filed in Regular Civil Suit No. 185 of 2000.

2. Exh.46 was an application seeking amendment in the suit filed for the relief of declaration and by the amendment even declaration in respect of the sale deed executed in the year 1986 was sought to be added. In fact the written statement filed on 17.1.2002 by these defendants clearly stated that land admeasuring 60 Ares from Gut No. 247 was sold to them by defendant No.2 in terms of the sale deed

dated 10.6.1986 and they also stated that they were in possession for about more than 15 years and at no point of time the plaintiffs had raised any grievance or interrupted the possession over the said land. The learned Judge of the trial court noted that the names of the defendant Nos. 5 to 9 were shown in the record of rights and the amendment was incorporated only to override law of limitation. The trial Court also noted that the other defendants had not contested the suit.

3. Mr. Deshpande also submitted that the issue of limitation can be framed and decided by allowing the amendment. He placed reliance on the decision of this Court in the case of **Maganlal Harilal Doshi and Ors. Vs. Sarvadaman Mansukhlal Doshi & Ors. (2003 (1) Mh.L.J. 390).** It is pertinent to note that in the case of Maganlal (supra) the facts were disputed and therefore, the court was required to go into the details to ascertain whether a particular case would or would not be time barred. In the instant case the sale deed dated 10.6.1986 is not disputed and in fact, in the plaint, moved by the plaintiffs, the same was suppressed. The issue of limitation even otherwise could be framed by the trial court at the instance of the defendants even without the amendment.

4. It is thus clear that the view taken by the trial court cannot be held to be perverse or patently erroneous so as to call for interference in this petition under Article 227 of the Constitution.

5. The petition fails and the same is hereby rejected summarily.